

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRANCESCA VIOLA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	NO. 1:21-CV-10426-LTS
JOSHUA BENTON and PRESIDENT AND)	
FELLOWS OF HARVARD COLLEGE)	
(HARVARD CORP.),)	
)	
Defendants.)	
)	

**MOTION TO STAY PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION TO
DISMISS PENDING THE COURT’S RULING ON PLAINTIFF’S MOTION TO AMEND
THE COMPLAINT**

Plaintiff Francesca Viola, (“Plaintiff”), by and through undersigned counsel hereby moves to stay Plaintiff’s Response to the Defendants’ Motion to Dismiss (Doc. No. 70) pending this Court’s ruling on Plaintiff’s Motion for Leave to File a Third Amended Complaint (Doc. No. 74). Plaintiff has conferred with Defendants concerning this motion. Defendants do not consent to this motion based on their position that the order in which motions are considered should be left to the discretion of the Court.

In her Second Amended Complaint, Plaintiff erred by failing to clearly allege the contract which formed the basis of her third-party beneficiary claim. *See* Plaintiff’s Motion for Leave to File Third Amended Complaint, Doc. No. 76. Plaintiff intended to incorporate the Disqus Terms of Service but failed to do so. *Id.* Plaintiff has sought leave of Court to file a Third Amended Complaint to correct this error. *Id.* If the Plaintiff is allowed to amend, then the Defendants’ arguments and, subsequently, Plaintiff’s response will be significantly altered. It is, therefore, in the interests of all parties that the proceedings related to the Defendant’s instant motion to dismiss

be stayed until such time as this Court rules on Plaintiff's Motion for Leave to File a Third Amended Complaint.

Plaintiff does not bring this motion to cause undue delay, but rather Plaintiff seeks to avoid undue prejudice to the parties, and the Court, by awaiting this Court's ruling on her Motion for Leave to Amend. Plaintiff respectfully requests this Court stay the proceedings related to Defendants' Motion to Dismiss until Plaintiff's Motion for Leave to Amend has been decided. Should Plaintiff's Motion for Leave be denied, Plaintiff requests five (5) days, or whatever time this Court deems reasonable, from that order in which to file a response to Defendant's Motion to Dismiss.

Respectfully Submitted,

/s/ Andrew C. Stebbins

Aaron M. Minc (0086718)*

Andrew C. Stebbins (0086387)*

Dorrian H. Horsey (0081881)*

Minc LLC

200 Park Ave., Suite 200

Orange Village, Ohio 44122

Phone: (216) 373-7706

Email: aminc@minclaw.com

astebbins@minclaw.com

dhorsey@minclaw.com

Attorneys for Plaintiff

*Admitted Pro hac vice

RULE 7.1(a)(2) CERTIFICATE

I certify that that prior to filing this motion, I conferred with Defendants' counsel and have attempted in good faith to resolve or narrow the issues presented by this motion, as required by Local Rule 7.1(a)(2).

Dated: September 22, 2021

/s/Andrew C. Stebbins

Andrew C. Stebbins

CERTIFICATE OF SERVICE

I, Andrew C. Stebbins, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/Andrew C. Stebbins

Andrew C. Stebbins